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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,476	03/15/2004	Andrew S. Van Luchene	03-030	1519
22927 7590 12/09/2008 WALKER DIGITAL MANAGEMENT, LLC 2 HIGH RIDGE PARK STAMFORD, CT 06905				
EXAMINER				
HAIDER, FAWAAD				
ART UNIT		PAPER NUMBER		
3627				
MAIL DATE		DELIVERY MODE		
12/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/800,476

Applicant(s)

VAN LUCHENE ET AL.

Examiner

FAWAAD HAIDER

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-19 and 21-27 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 2-19 and 21-27 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date 3/15/04
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 2-19 in the reply filed on 9/3/08 is acknowledged.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2-19 and 21-27 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory. The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101. *Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.*

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 2-10, 13-14, 18-19, and 21-25 are rejected under 35 U.S.C. 102(b) as being unpatentable over Battistini et al (5,907,275).

Re Claim 2: Battistini discloses comprising: determining that a customer is at an ordering station (see Figures 1-2); receiving an order of the customer at the ordering station (see Abstract, col.1, lines 6-8, col.2, lines 21-22); outputting a first offer at the ordering station (see col.4, lines 10-13, col.4, lines 53-60, col.6, lines 45-46, col.7, lines 25-26, col.8, lines 23-28); determining that the customer is at a second station (see Figures 1-2); and outputting a second offer at the second station (see col.4, lines 10-13, col.4, lines 53-60, col.6, lines 45-46, col.7, lines 25-26, col.8, lines 23-28).

Re Claim 3: Battistini discloses in which determining that a customer is at an ordering station comprises: detecting a vehicle (see Figure 2).

Re Claim 4: Battistini discloses in which the second offer is the same as the first offer (see col.4, lines 51-54).

Re Claim 5: Battistini discloses in which the second offer is different than the first offer (see col.6, lines 42-45).

Re Claim 6: Battistini discloses further comprising: terminating output of the first offer before the first offer is completed (see col.2, lines 38-41).

Re Claims 7, 24, 25: Battistini discloses further comprising: receiving an indication that the customer is not at the ordering station; and automatically terminating output of the first offer in response to receiving the indication that the customer is not at the ordering station (see Figure 2).

Re Claim 8: Battistini discloses further comprising: determining the first offer based on the order (see col.2, lines 7-11).

Re Claim 9: Battistini discloses in which determining the first offer comprises: determining a subtotal of the order; and determining the first offer based on the subtotal (see col.1, line 25, Figure 4).

Re Claim 10: Battistini discloses in which determining the first offer comprises: determining at least one item in the order; and determining the first offer based on the at least one item (see col.7, lines 27-31).

Re Claim 13: Battistini discloses in which the second station is a pick-up station (see Figure 2).

Re Claim 14: Battistini discloses in which the second station is a payment station (see Figure 2).

Re Claim 18: Battistini discloses further comprising: determining whether the first offer was completed; and determining the second offer based on whether the first offer was completed (see col.7, lines 4-6).

Re Claim 19: Battistini discloses in which the ordering station comprises a menu board (see Figures 1 and 2).

Re Claims 21, 23: Battistini discloses in which determining that the customer is at the ordering station comprises: sensing that the customer is at a digital menu board of a drive-through (see Figure 2).

Re Claim 22: discloses further comprising: outputting an automated greeting using the ordering station.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11-12, 15-17, and 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Battistini et al (5,907,275) in view of Walker et al (6,374,240).

Battistini fails to disclose the following limitations:

Re Claims 11, 26: Walker discloses in which the first offer comprises an upsell offer (see col.13, line 1).

Re Claim 12: Walker discloses in which the first offer comprises an offer for an item in exchange for an amount of change due (see col.13, line 1).

Re Claim 15: Walker discloses further comprising: determining the second offer based on the first offer (see Figures 12, 18, 19).

Re Claim 16: Walker discloses further comprising: receiving a response to the first offer; and determining the second offer based on the response to the first offer (see Figures 12, 18, 19).

Re Claim 17: Walker discloses further comprising: determining whether the first offer was accepted; and determining the second offer based on whether the first offer was accepted (see Figures 12, 18, 19).

Re Claim 27: Walker discloses further comprising: determining that the customer left the ordering station before output of the first upsell offer was completed; and in which outputting the second offer at the second station comprises: outputting a second upsell offer to the customer at the second station (see col.13, line 1 and Figure 1).

From the teaching of Walker, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Battistini's invention with Walker's

technique in order that "drive-through customers may be provided with customized benefits (see Walker col.1, lines 43-44)."

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mueller et al (5,235,509) discloses a customer self-ordering system using information displayed on a screen. Cogen (2002/0138350) discloses a system and method for placing orders at a restaurant.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fawaad Haider whose telephone number is 571-272-7178. The examiner can normally be reached on Monday-Friday 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Ryan Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Fawaad Haider/

Examiner

Art Unit 3627

FIH

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

